

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant and Owner: Jeffrey Krauth, 487 Audubon Road, Leeds, MA 01053

Date Application filed with the Town Clerk: February 6, 2006

Nature of request: Petitioner seeks a Special Permit, under Section 9.22 of the Zoning Bylaw to use a space in the R-G zone for a hot-tub spa business.

Location of property: 319 Main Street (Map 14B, Parcel 28, R-G Zoning District)

Legal notice: Published in the Daily Hampshire Gazette on February 8 and February 15, 2006, and sent to abutters on February 8, 2006.

Board members: Zina Tillona, Russ Frank and Jane Ashby

Submissions: The applicants submitted the following documents:

- Preliminary Designs, prepared by Jeff and Diana Krauth, dated February 1, 2006;
- "Schematic Design" prepared by Integrity Development and Construction, Inc., dated February 1, 2006;
- Parking Plan for the site showing 34 parking spaces (incorrect);
- Management Plan dated February 1, 2006;
- Descriptive Narrative of the "Elements" Business Plan, undated;
- Résumés of Diana Krauth and Jeffrey Krauth

Town staff submitted the following documents:

- Letter to the Zoning Board of Appeals from Jason Skeels, Town Engineer, dated February 16, 2006, commenting on plumbing, utilities and health issues.
- The Planning Department submitted a corrected parking plan showing a schematic site plan with 20 existing parking spaces.
- The Planning Department submitted a memorandum dated February 16, 2006, commenting on the application.

The public submitted the following documents:

- Letter to Zina Tillona, Chair of the Zoning Board of Appeals, from Marjorie Crossman, dated March 4, 2006, in opposition to the application.

Site Visit: February 21, 2006

At the site visit the Board was met by Jeffrey and Diana Krauth, the applicants, as well as Lance Lucas of Kamins Real Estate, and Kyle Wilson of Integrity Development and Construction, Inc.

The Board observed the following:

- The location of the property on a heavily-traveled road across from the Emily Dickinson Museum;
- The front and side entrances to the space;

- The interior of the space formerly occupied by Valley Bicycles;
- The existing stairs to the basement;
- The location of the proposed access to the roof that is located over the basement;
- The proposed locations of the hot tubs on the roof;
- The door from the roof into the Home Health Care Professional office;
- The exterior stairs from the roof down to the back alley;
- The parking lot that is shared by all tenants in the building;
- The low area at the front door where water collects.

Public Hearing: February 23, 2006.

At the public hearing Jeffrey and Diana Krauth presented the petition. They made the following statements:

- The Krauths owned Beyond Words Bookshop in Northampton for years;
- They have experience rehabilitating older buildings;
- There will be indoor and outdoor hot tubs; the hot tubs will operate in all kinds of weather;
- Hot tubs are therapeutic and have healing powers;
- There will be music in the rooms but not outside;
- There will be a limit of 6 people per tub;
- There will be 7 tubs operating with approximately 21 people maximum served at one time;
- They propose to open at 11:00 a.m. and to close at midnight on most nights and 1:00 a.m. on Fridays and Saturdays; the busiest hour will probably be 10:00 p.m. on Saturday night;
- There will be no alcohol allowed; guests will not be permitted to bring alcohol;
- Bags and shoes will be checked at the door;
- No intoxicated people will be allowed in;
- There will be 2 staff people on the premises all the time; sometimes there will be as many as 3 or 4;
- East Heaven Hot Tubs, located in a residential area in Northampton, has had no complaints from neighbors; it is a quiet operation;
- The age group to be served will be primarily adults, with some college students;
- The cost will be \$60 per hour for two people; coupons will be available, lowering the average cost with a coupon to \$45;
- No people will be allowed in a tub alone; safety procedures will be established;
- Young people will not be admitted without an adult; 18 is the lower age limit for unaccompanied young people;
- The rooms are separate; there will be no wild parties allowed.

Kyle Wilson from Integrity Builders spoke and presented plans. He noted the following:

- The interior walls that separate the rooms will extend from floor to ceiling;
- The basement will be used for laundry, storage and utilities;
- There will be two roof areas, with a total of 4 tubs on the roof;
- The roof will have a deck with fencing or privacy walls;
- Outdoor rooms will not have roofs;
- Each room will have a shower and a changing area;
- There will be a second means of egress in back;
- The sight lines from adjacent windows will be blocked by the fencing or walls;
- The deck and fences will be built of natural wood materials;
- The sign will be wooden or painted;

- There will be lights for the parking lot mounted on the west side of the building;
- The applicant has spoken with the Town Engineer about the sanitary sewer line and will continue to work with him regarding draining of tubs;
- The tubs are filled with a hose and drained with a pump;
- The tubs are “state-of-the-art” tubs;
- The Krauths have spoken with the Health Department.

Jane Ashby asked if the owners would consider closing at 9:00 p.m. instead of midnight. Diana Krauth stated that the busiest hours are 9:00, 10:00 and 11:00 at night.

Mark Snow, Assistant Building Commissioner, stated that the building would need a structural evaluation and that the deck and stairs will need a railing system.

Diana Krauth stated that the bathrooms will be universally accessible but that a lift is not required by ADA regulations to gain access to the tubs.

The Board discussed means of egress and emergency lighting and exit signs with the applicant. Mark Snow noted that there would be a fire alarm system in the building.

Richard Alcorn of 11 Dickinson Street spoke in opposition to the application. He stated that this is the third proposal to build a “party” deck on this building. He is concerned about the use of the deck by fraternities who might throw things off the roof into the yard of the adjacent house. He and his wife own the adjacent house. He has concerns about drainage issues. The parking lot drains towards his yard. He will oppose the application. He wants to have quiet enjoyment of his property. The proposal is very problematic for a residential neighborhood.

Sam Gladstone, a physician, who has an office at 12 Dickinson Street expressed support for the application and the therapeutic benefits of hot tubs.

The Board asked about parking and how many cars would be expected. Ms. Krauth did not answer this question directly but stated that the hours of the businesses that share the parking lot do not always overlap, except on Saturdays. The busiest hot tub hours are 6 to midnight on Saturday. She referred to the plan of the site provided by Kamins Real Estate that showed over 25 parking spaces and stated that there were also metered spaces on the other side of the street. She stated that the owners and staff could get parking permits to park on side streets nearby. In addition, people who are coming to use the hot tubs won't all come in separate cars. The Board and the Krauths discussed parking requirements further.

Mark Snow noted that the Building Code issues were unresolved. Ms. Tillona stated that the Board would not be able to make a decision at this meeting because there were too many unknowns.

She recommended that the Krauths consult with Mr. Alcorn to see if they can reach a negotiated settlement.

The Board again inquired about the possibility of different hours of operation. Ms. Krauth stated that the hours needed to extend to midnight during the week and 1:00 a.m. on weekends.

The Board asked about noise and whether there would be a sound barrier on the roof. Ms. Krauth responded that there would be no sound barrier but that this was a quiet activity.

Ms. Tillona stated that the Krauths needed to do the following:

- 1) Consult with the Town Engineer about the sanitary sewer issues and about his other concerns expressed in his letter of February 16, 2006;
- 2) Prepare more specific actual plans;
- 3) Resolve the types of building materials that will be used on the roof;
- 4) Meet with Inspection Services regarding code problems and how they can be resolved;
- 5) Prepare a realistic parking plan, including a written statement about how the Krauths propose to manage parking for clients and employees, either using on-site spaces or off-site spaces.

Ms. Ashby noted that the applicants were proposing to use over 1/3 of the parking spaces for the entire building.

Ms. Tillona noted that the Management Plan submitted by the applicants was adequate except for customer control and safety.

Russ Frank MOVED to continue the evidentiary portion of the public hearing to March 20, 2006, at 1:00 p.m. Zina Tillona SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

After the hearing was continued Jeffrey Krauth submitted a letter to the Zoning Board of Appeals, dated March 10, 2006, stating that he wished to withdraw without prejudice his request for a Special Permit.

Continued Public Hearing: March 20, 2006

On March 20, 2006, Zina Tillona continued the evidentiary portion of the public hearing to Monday, March 27, 2006, at 1:30 p.m. due to the lack of a quorum.

Continued Public Hearing: March 27, 2006

Russ Frank MOVED to approve the withdrawal without prejudice. Jane Ashby SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to approve the WITHDRAWAL WITHOUT PREJUDICE of the application for Special Permit filed by Jeffrey Krauth, under Section 9.22 of the Zoning Bylaw, to use a space in the R-G zone for a hot-tub spa business.

ZINA TILLONA

RUSS FRANK

JANE ASHBY

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2006.
NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.